UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES LITIGATION	§	Civil Action No. H-01-3624
	§	**(Consolidated)**
	§	
	§	CLASS ACTION
This Document Relates To:	§	
MARK NEWBY, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
ENRON CORP., et al.,	§	
Defendants.	§	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Individually and On Behalf of All Others Similarly Situated,	§	
Plaintiffs,	§	
vs.	§	
KENNETH L. LAY, et al.,	§	
Defendants.	§	

LEAD PLAINTIFF'S OPPOSITION TO DEFENDANTS MARK A. FREVERT, STEVEN J. KEAN, REBECCA MARK-JUSBASCHE AND LOU L. PAI'S MOTION TO COMPEL LEAD PLAINTIFF TO ANSWER TO INTERROGATORIES AND REQUESTS FOR EXPEDITED CONSIDERATION (DOCKET #~~2194~~ 2192)

2226

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Page

Page

STATUTES, RULES AND REGULATIONS

SECONDARY AUTHORITIES

I. INTRODUCTION

Defendants claim that Lead Plaintiff has failed to respond to interrogatories. They further claim that all they want is the identity of witnesses in order to take the necessary depositions. They are wrong as to both. In fact, Lead Plaintiff has provided a list of witnesses in response to the interrogatories and many of those witnesses have been deposed or are on the July/August deposition schedule. Defendants insist not that they receive a list of persons with knowledge of the Complaint's allegations, but that Lead Plaintiff identify each witness and ***link*** the witness to a specific paragraph in the Complaint. Not only that, they also seek answers to contention interrogatories. Defendants' motion is not supported by the law.

"The interrogatories at issue request the Lead Plaintiff to identify specific persons falling into one of two categories: a) persons quoted in the Complaint; or b) persons referred to in the Complaint." Motion to Compel Lead Plaintiff to Answer Interrogatories and Request for Expedited Consideration ("MTC") at 2. Each interrogatory concerns a specific paragraph in plaintiffs' Complaint and each interrogatory specifically demands: "Include in your identification of factual basis the identification of the witness(es) and/or documents upon which you rely for such factual basis." *See generally* Defendants' Interrogatories. Defendants repeatedly, but incorrectly, assert that they merely request the simple disclosure of discoverable facts. They do not.

Defendants' Interrogatories are hardly as benign as defendants would have the Court believe. Rather, defendants seek to determine which confidential witnesses were interviewed by and cooperated with Lead Counsel when it drafted the Complaint. The revelation of confidential sources for specific factual allegations would give opposing counsel substantial insight into which witnesses Lead Counsel deems important and credible. This is classic work product; the Court should not compel its disclosure. *See infra* §II.A. The requested information need not be disclosed for an additional, but equally important reason. Compelling counsel to reveal the names of witnesses

referenced in a securities fraud complaint, particularly at an early stage of the proceedings, "'could deter informants from providing critical information to investigators in meritorious cases or invite retaliation against them.'" *ABC Arbitrage v. Tchuruk*, 291 F.3d 336, 352-53 (5th Cir. 2002) (quoting *Novak v. Kasaks*, 216 F.3d 300, 314 (2d Cir.), *cert. denied*, 531 U.S. 1012 (2000)). *See infra* §II.B.

In addition to the foregoing reasons, plaintiffs should not be compelled to respond to Defendants' Interrogatories as they amount to premature contention interrogatories that, in light of the nature of this action, are calculated more to harass plaintiffs than to enlighten defendants as to the merits of the case against them. Fact discovery is not even close to finished. Yet, defendants want to know the documents and the witnesses supporting plaintiffs' allegations. This poses a tremendous and unwarranted burden to Lead Counsel. Millions and millions of pages of documents have been produced in this action, many of which directly support many of plaintiffs' allegations. Moreover, plaintiffs have interviewed hundreds of witnesses in investigating this case and have reviewed the sworn testimony of even more witnesses, not to mention the witnesses' contemporaneous correspondence. Identification of each percipient witness knowledgeable as to each of plaintiffs' allegations in the Complaint poses nearly as daunting a task as identifying each document supporting plaintiffs' allegations. Requiring plaintiffs to answer Defendants' Interrogatories presently, and then update those responses continually as discovery proceeds, is an unduly burdensome request. Interrogatories requesting such information are not called for at this stage of the proceedings. *See infra* §II.C.

Finally, despite defendants' assertions to the contrary, defendants suffer no undue harm from plaintiffs' principled objection to the posed interrogatories. Defendants, like plaintiffs, will be and have been afforded ample time and access to proper discovery of the pertinent facts in this action. *See infra* §II.A.

II. ARGUMENT

A. Which Confidential Informants Lead Plaintiff Chose to Interview and Which Confidential Informants Provided the Basis for Lead Plaintiff's Allegations Is Protected Attorney Work Product

By demanding that plaintiffs identify persons quoted or referenced in the Complaint, defendants in effect seek an order compelling plaintiffs to specifically link allegations in the Complaint with the specific person(s) whom plaintiffs' counsel interviewed to support that factual allegation. However, it is "established law ... that there is work product in the identity of witnesses interviewed or otherwise relied upon by plaintiffs" in drafting their Complaint. *In re MTI Tech. Corp. Sec. Litig. II*, No. SACV 00-0745 DOC (ANx), 2002 U.S. Dist. LEXIS 13015, at *10 (C.D. Cal. June 13, 2002). Accordingly, parties are not obligated to disclose which witnesses they interview, and are only required to disclose the identities of persons likely to know relevant facts to a proceeding. ***Plaintiffs have provided a list of fact witnesses in response to Defendants' Interrogatories.*** *See* Exhibit A to Lead Plaintiff's Responses to Defendants' Interrogatories. In the context of securities fraud litigation, in which plaintiffs must plead with particularity in excess of that which is required in the normal course, courts are particularly hesitant to demand disclosure of the actual identity of specific sources for allegations pleaded. Plaintiffs' objections to the interrogatories are in accord.

Despite defendants' failure to cite any case law concerning the issue, this Court is not the first district court to address the propriety of interrogatories seeking the identification of confidential witnesses referenced in a complaint alleging violations of the federal securities laws.[1] Indeed, the Honorable Judge Leonard Davis of the Eastern District of Texas recently confronted the exact issue

---

[1] Defendants' reliance on *Robinson v. La. Dock Co.*, No. 99-1996, 2001 U.S. Dist. LEXIS 16314 (E.D. La. Oct. 3, 2001), is misplaced. Unlike Lead Plaintiff's responses in this case, in *Robinson*, defendants made a blanket work-product objection and provided no response to plaintiff's interrogatories.

presently pending. Citing relevant authority, Judge Davis denied the defendant's motion to compel holding that interrogatories seeking the disclosure of confidential sources of allegations infringe upon an attorney's opinion work product:

> The Court finds that revealing the identity of witnesses interviewed would permit opposing counsel to infer which witnesses counsel considers important, thus, revealing mental impressions and trial strategy.... Such evaluations and strategies are at the heart of the work product rule.

Elec. Data Sys. Corp. v. Steingraber, No. 4:02 CV 225, 2003 U.S. Dist. LEXIS 11816, at *7-*8 (E.D. Tex. June 27, 2003).[2] In the context of complex litigation concerning violations of the federal securities laws, the "identification of individuals that are linked to the very special factual contentions in the [complaint] ... would necessarily reveal counsel's opinions regarding the relative importance of these witnesses, the highlights of their testimony/factual knowledge, and would link any future factual statements by the witnesses with Plaintiff's counsel's legal theories and conclusions as outlined in the complaint." *MTI Tech.*, 2002 U.S. Dist. LEXIS 13015, at *12.

Other courts addressing this issue in the federal securities context have similarly held that plaintiffs need not link the identity of confidential sources with the specific allegations in their complaint. In *In re Ashworth Sec. Litig.*, 213 F.R.D. 385 (S.D. Cal. 2002), the court determined that the identities of confidential sources interviewed by plaintiffs in a federal securities class action while drafting a Complaint constituted Lead Counsel's work product. *Id.* at 389. This court is not alone.[3] The rare cases ordering plaintiffs to identify confidential sources referenced in a complaint are distinguishable from the facts here and/or incorrectly decided.[4]

---

[2] Citations are omitted and emphasis is added unless otherwise noted.

[3] *See, e.g. Kerns v. SpectraLink Corp.*, No. 02-D-263 (MJW), Minute Order (D. Colo. Aug. 21, 2003) (minute order in a securities class action denying defendants' motion to compel certain interrogatory responses seeking the identity of confidential witnesses) (Ex. A, hereto); *Stanley v. Safeskin Corp.*, No. 99cv0454-BTM (LSP), Order (S.D. Cal. Apr. 12, 2001) (Ex. B, hereto) (denying

Ignoring the authorities cited above and the Supreme Court's decision in *Hickman v. Taylor*, 329 U.S. 495 (1947), defendants argue: "Lead Plaintiff's assertion of the work-product doctrine immediately stumbles because the doctrine applies only to 'documents and tangible things.'" MTC at 3 (citing *In re Pfohl Bros. Landfill Litig.*, 175 F.R.D. 13, 27 (W.D.N.Y. 1997)) (emphasis omitted). Defendants are simply incorrect. In *Hickman*, the Supreme Court established that work product manifests itself in many forms, both tangible and intangible:

> [I]t is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their client's interests. This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways – aptly though roughly termed by the Circuit Court of Appeals in this case as the "work product of the lawyer."

---

similar motion to compel in a securities class action); *Schbley v. Gould,* No. 91-1420-FGT, 1994 U.S. Dist. LEXIS 4082, at *5 (D. Kan. Mar. 29, 1994) ("the work product rule ***does protect against inquiry of the identity of persons contacted and/or interviewed*** during an investigation of the incident in anticipation of litigation or for trial"); *Mass. v. First Nat'l Supermarkets, Inc.,* 112 F.R.D. 149, 153 (D. Mass. 1986) ("'to tell plaintiffs whom defendants have interviewed ... is to give plaintiffs no more knowledge of substantive relevant facts, but rather to afford them the potential for significant insights into the [] lawyers' preparation of their case (and thus mental processes)'").

[4] *In re Aetna Inc. Sec. Litig.*, MDL No. 1219, 1999 U.S. Dist. LEXIS 8038 (E.D. Pa. May 26, 1999), is based upon an improper reading of *United States v. Amerada Hess Corp.*, 619 F.2d 980 (3d Cir. 1980). *See Aetna*, 1999 U.S. Dist. LEXIS 8038, at *7-*8. Subsequent to deciding *Amerada Hess*, the Third Circuit made clear that the identity of witnesses interviewed by a party is work product information. *See Appeal of Hughes*, 633 F.2d 282, 289 (3d Cir. 1980) (specifically clarifying holding of *Amerada Hess* and stating that "the list of persons interviewed ... fall[s] within the definition of work product"). Moreover, in *Aetna* plaintiffs' initial disclosures unreasonably listed ***750*** persons. 1999 U.S. Dist. LEXIS 8038, at *11-*12. Here, plaintiffs have provided defendants a reasonable list of fact witnesses knowledgeable about plaintiffs' allegations, particularly when viewed in light of the complexity and scope of this action. *In re Theragenics Corp. Sec. Litig.*, 205 F.R.D. 631 (N.D. Ga. 2002), is similarly unconvincing because "the court in *Theragenics* relied specifically, and clearly based its holding, on the *Aetna* court's rationale in determining whether the information was protected as work product." *Ashworth,* 213 F.R.D. at 389.

Hickman, 329 U.S. at 510-11. ***"It is clear from Hickman that work product protection extends to both tangible and intangible work product."*** *In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 662 (3d Cir. 2003); *see also* 8 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d §2024, at 337-38 (2d ed. 1994) ("*Hickman v. Taylor* continues to furnish protection for work product within its definition that is not embodied in tangible form .... Indeed, since intangible work product includes thoughts and recollections of counsel, it is often eligible for the special protection accorded opinion work product."). Accordingly, defendants' argument that the work-product doctrine only applies to documents and tangible things fails.

B. Well-Established Fifth Circuit Authority Protects Confidential Whistleblowers and Informants from Unnecessary Identification and Retaliation

It is a vital imperative to the well-functioning of the federal securities laws that the identity of confidential sources be protected from unnecessary and/or premature disclosure, particularly in securities fraud class actions which rely heavily upon evidence provided by confidential whistleblowers to plead the requisite strong inference of scienter demanded by the PSLRA. An honest employee – a whistle-blower – who provides damaging information faces a serious threat of retaliation by his corporate employer.

> [T]here are important public policy concerns implicated by disclosure of former employees acting as informants. Although the whistle-blower privilege is not available in this private suit, that does not lessen the need to consider the practical results of an order requiring disclosure of the employees' identities. ***The Fifth Circuit generally recognized that former employees acting as informers could face serious consequences if their identities were revealed by plaintiff's counsel.***

MTI Tech., 2002 U.S. Dist. LEXIS 13015, at *17-*18 (citing *Hodgson v. Charles Martin Inspectors of Petroleum, Inc.*, 459 F.2d 303, 306 (5th Cir. 1972)).[5] This Court and the Fifth Circuit have

---

[5] *See also Mgmt. Info. Techs. v. Alyeska Pipeline Serv. Co.*, 151 F.R.D. 478, 481 (D.D.C. 1993); *cf. McCray v. Illinois*, 386 U.S. 300, 305-14 (1967); *Roviaro v. United States*, 353 U.S. 53, 59

specifically acknowledged the importance of protecting confidential witnesses used by plaintiffs to satisfy the heightened pleading standards set forth in the PSLRA. *See, e.g.*, *ABC Arbitrage*, 291 F.3d at 352-53 (compelled disclosure of sources "'could deter informants from providing critical information to investigators in meritorious cases or invite retaliation against them'"); *In re Enron Sec. Litig.*, 235 F. Supp. 2d 549, 570-71 (S.D. Tex. 2002) (refusing to require disclosure of confidential sources).

Given the Fifth Circuit's stated desire to protect confidential informants from retribution for their honesty, at least at the pleading stage, there is no reason to force plaintiffs to disclose their confidential sources now that plaintiffs have survived a motion for dismissal. Indeed, the Fifth Circuit has recognized that simply because a complaint's allegations are based upon facts provided by a confidential informant, the defendant is not entitled to learn the identity of that informant. In *Wirtz v. Cont'l Fin. & Loan Co.*, 326 F.2d 561 (5th Cir. 1964), the Fifth Circuit recognized that under certain circumstances "[i]t is perfectly plain that the names of informers are utterly irrelevant to the issues to be tried by the trial court." *Id.* at 563 (denying defendants' motion to compel interrogatories requesting names of employee informants). The Fifth Circuit determined that if a parties' case could be proven without the testimony of a confidential informant, forcing that party to identify the informant prematurely would serve no legitimate purpose. "[Under] such circumstances the only conceivable need for the names of the informers would be the desire of the employer to know who had informed on it." *Id.*

Here, plaintiffs have drafted their Complaint in reliance in part upon information provided by confidential informants. Plaintiffs have refused to answer defendants' interrogatories on the grounds

---

(1957); *United States v. Rawlinson*, 487 F.2d 5 (9th Cir. 1973); *Mitchell v. Roma*, 265 F.2d 633, 636 (3d Cir. 1959); *Reich v. Midpoint Registry*, No. 92-5058, 1993 U.S. Dist. LEXIS 15426, at *1-*4 (D.N.J. June 1, 1993).

that, among other things, it would violate the privacy rights of the individual confidential informants. *See* Lead Plaintiffs' Responses to Defendants Interrogatories, General Objections at ¶4. Certain witnesses have specifically informed Lead Counsel that disclosure of their identities would result in retribution by their present employer. Declaration of Paul Howes, filed herewith at ¶2. Accordingly, Lead Counsel has agreed to take all appropriate measures to maintain the confidentiality of the identities of certain witnesses and the specifics of what these certain confidential witnesses told Lead Counsel. *Id.* at ¶3. Forcing plaintiffs to answer defendants' interrogatories presently will either explicitly reveal the names of plaintiffs' confidential sources and inform defendants of the exact facts provided by the confidential witness, or defendants will be provided with ample information for figuring out the true identities of such confidential witnesses. In either event, Lead Counsel has every reason to believe that honest individuals who spoke out to help reveal this massive deception would be unjustly harmed if Lead Counsel were required to answer Defendants' Interrogatories in the manner they suggest.

C. Defendants' Interrogatories Are Premature Contention Interrogatories

Defendants attempt to obscure the true nature of the interrogatories to which they seek to compel responses by asserting that they are "simple, straightforward 'identification' interrogatories." MTC at 1. They are not. Defendants' Interrogatories, and all of them, state: "Include in your identification of factual basis the identification of the witness(es) and/or documents upon which you rely for such factual basis." *See generally* Defendants' Interrogatories. Plaintiffs objected to these contention interrogatories. *See* Lead Plaintiffs' Responses to Defendants' Interrogatories, General Objections at ¶8. Defendants' Interrogatories are classic contention interrogatories because they request plaintiffs to state the facts upon which they base their specific contentions and/or to defend

such contentions. *See, e.g., Brown v. United States*, 179 F.R.D. 101, 105 (W.D.N.Y. 1999) ("a contention interrogatory may ask a party to state all the facts upon which it bases a contention").[6]

The Federal Rules of Civil Procedure provide specific guidance for the timing of responses to contention interrogatories. Both Rule 33(b) and the Advisory Committee Notes thereto support the proposition that such interrogatories need be answered only after discovery has been completed. Rule 33(b) provides:

> An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, ***but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.***

Plaintiffs contend that the contention interrogatories at issue here are particularly problematic for two separate reasons.

The sheer magnitude of this action makes the imposition of contention interrogatories requesting the identification of documents and witness unnecessarily burdensome and unproductive. There are a multitude of defendants in this action, each one of which could (and likely will should the Court allow it) serve plaintiffs with contention interrogatories demanding that plaintiffs identify each witness and each document supporting a specific allegation raised in plaintiffs' Complaint. And, given the millions upon millions of documents produced already, and being produced everyday, to continually update a list of all of the documents supporting plaintiffs' numerous allegations would prove to be a burdensome task indeed. To enable any party to so burden another party with such interrogatories, particularly at this early stage in the proceedings, would work an

---

[6] As defendants offer no credible basis for why plaintiffs must answer these contention interrogatories presently, Defendants' Interrogatories may be distinguished from the instance where a party serves interrogatories seeking to determine other matters, including interrogatories concerning what defenses a party may raise at trial.

injustice without providing any commensurate measurable benefit to either the Court or the opposing party. "[J]udicial economy as well as efficiency for the litigants dictate that contention interrogatories are more appropriate after a substantial amount of discovery has been conducted. In the instant case, although many documents have been produced, discovery is still in its infancy." *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 111 (D.N.J. 1990).

Moreover, in this action plaintiffs have more than adequately put defendants on notice of the claims against them by serving a particularized complaint, thereby reducing any purported necessity for onerous interrogatories further detailing plaintiffs' allegations. Further still, plaintiffs' allegations have been substantially corroborated by various governmental and other investigations. Indeed, using the Consolidated Complaint as a roadmap, Bankruptcy Examiner Neal Batson compiled a substantial record of evidence which is available to defendants. Accordingly, there is no need for defendants to obtain answers to the interrogatories presently. "Courts ... often defer ordering answers to contention interrogatories until the end of discovery ***and a requesting party will be required to show how an earlier response assists the goals of discovery such as exposing a substantial basis for a motion under Fed. R. Civ. P. 11 and 56.***" *Brown*, 179 F.R.D. at 105. Here, given the level of particularity in plaintiffs' Complaint and the vast wealth of information subsequently brought to light, defendants can point to no "substantial basis" for bringing a motion under Fed. R. Civ. P. 11 or 56 at this stage of the proceedings. As a result, defendants' contention interrogatories are premature.

D. Defendants Suffer from No Substantial Need nor Undue Hardship Sufficient to Justify Disclosing the Identities of Whistleblowers, Revealing Plaintiffs' Work Product or Imposing Onerous Contention Interrogatories

Defendants contend they will be "unfairly handicapped in conducting depositions" if plaintiffs are not compelled to identify the witnesses and the documents that support plaintiffs' allegations in the Complaint. MTC at 2. Defendants have not, however, specified the undue

hardship that they purport to suffer or why they cannot obtain the substantial equivalent of the requested information by other means. Although defendants claim they are seeking to discover basic information necessary to prepare for the eighteen months of fact depositions that have just begun, they outright ignore their own ability to interview or depose the witnesses identified by Lead Plaintiff. There is simply no need for plaintiffs to have to link the witnesses to each specific allegation in plaintiffs' Complaint.

Moreover, the names of most witnesses identified by Lead Plaintiff (and many, many more) are not new to defendants given that they have testified before Congress, given statements to the court-appointed Bankruptcy Examiner Neal Batson, or been identified in the voluminous documents produced in discovery already. Defendants have had access to these materials for many months, if not years. Defendants simply cannot show substantial need or undue hardship demanding that plaintiffs perform defendants' work for them. Nor can defendants demonstrate an overwhelming need to know the identity of each confidential witness, as it pertains to each allegation in the Complaint, in light of the fact that such disclosure will violate the witnesses' privacy rights and likely cause substantial harm to them. Defendants should be required to do their own work and interview the witnesses as they see fit, rather than cutting corners by asking plaintiffs to reveal who the best witnesses are. *See Sporck v. Peil,* 759 F.2d 312, 316 (3d Cir. 1985) (noting that it is in the best interest of the adversary system "that each side relies on its own witnesses in preparing their respective cases").

III. CONCLUSION

For the reasons stated herein and as set forth in Lead Plaintiff's responses and objections to defendants' interrogatories, defendants' motion to compel interrogatory responses should be denied.

DATED: June 23, 2004

Respectfully submitted,

LERACH COUGHLIN STOIA
& ROBBINS LLP
WILLIAM S. LERACH
DARREN J. ROBBINS
HELEN J. HODGES
BYRON S. GEORGIOU
JAMES I. JACONETTE
MICHELLE M. CICCARELLI
JAMES R. HAIL
ANNE L. BOX
JOHN A. LOWTHER
ALEXANDRA S. BERNAY
MATTHEW P. SIBEN
ROBERT R. HENSSLER, JR.

Helen J. Hodges By permission
HELEN J. HODGES

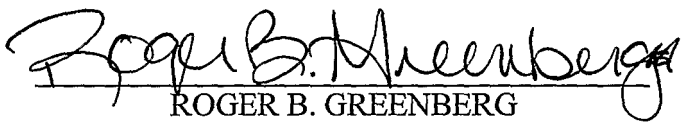
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

LERACH COUGHLIN STOIA
& ROBBINS LLP
REGINA M. AMES
355 South Grand Avenue, Suite 4170
Los Angeles, CA 90071
Telephone: 213/617-9007
213/617-9185 (fax)

LERACH COUGHLIN STOIA
& ROBBINS LLP
G. PAUL HOWES
JERRILYN HARDAWAY
Texas Bar No. 00788770
Federal I.D. No. 30964
1111 Bagby, Suite 4850
Houston, TX 77002
Telephone: 713/571-0911

Lead Counsel for Plaintiffs

SCHWARTZ, JUNELL, GREENBERG
& OATHOUT, LLP
ROGER B. GREENBERG
State Bar No. 08390000
Federal I.D. No. 3932



ROGER B. GREENBERG

Two Houston Center
909 Fannin, Suite 2000
Houston, TX 77010
Telephone: 713/752-0017

HOEFFNER & BILEK, LLP
THOMAS E. BILEK
Federal Bar No. 9338
State Bar No. 02313525
440 Louisiana, Suite 720
Houston, TX 77002
Telephone: 713/227-7720

Attorneys in Charge

BERGER & MONTAGUE, P.C.
SHERRIE R. SAVETT
1622 Locust Street
Philadelphia, PA 19103
Telephone: 215/875-3000

Attorneys for Staro Asset Management

WOLF POPPER LLP
ROBERT C. FINKEL
845 Third Avenue
New York, NY 10022
Telephone: 212/759-4600

Attorneys for Nathaniel Pulsifer

SCOTT + SCOTT, LLC
DAVID R. SCOTT
NEIL ROTHSTEIN
S. EDWARD SARSKAS
108 Norwich Avenue
Colchester, CT 06415
Telephone: 860/537-3818

Attorneys for the Archdiocese of Milwaukee Supporting Fund, Inc.

LAW OFFICES OF JONATHAN D. McCUE
JONATHAN D. McCUE
4299 Avati Drive
San Diego, CA 92117
Telephone: 858/272-0454

Attorneys for Imperial County Board of Retirement

CUNEO WALDMAN & GILBERT, LLP
JONATHAN W. CUNEO
MICHAEL G. LENETT
317 Massachusetts Avenue, N.E.
Suite 300
Washington, D.C. 20002
Telephone: 202/789-3960

Washington Counsel

S:\CasesSD\Enron\Discovery\opp defs mtc rog res.doc

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO DEFENDANTS MARK A. FREVERT, STEVEN J. KEAN, REBECCA MARK-JUSBASCHE AND LOU L. PAI'S MOTION TO COMPEL LEAD PLAINTIFF TO ANSWER TO INTERROGATORIES AND REQUESTS FOR EXPEDITED CONSIDERATION (DOCKET #2194) document has been served by sending a copy via electronic mail to serve@ESL3624.com on this June 23, 2004.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO DEFENDANTS MARK A. FREVERT, STEVEN J. KEAN, REBECCA MARK-JUSBASCHE AND LOU L. PAI'S MOTION TO COMPEL LEAD PLAINTIFF TO ANSWER TO INTERROGATORIES AND REQUESTS FOR EXPEDITED CONSIDERATION (DOCKET #2194) document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this June 23, 2004.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

Mo Maloney

8.21.03

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-D-263 (MJW) (As Consolidated with 02-D-315 (MJW))

WILMER KERNS, et al.,

Plaintiff(s),

v.

SPECTRALINK CORPORATION, et al.,

Defendant(s).

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE MICHAEL J. WATANABE

It is hereby ORDERED that the Defendant's Motion to Compel Certain Interrogatory Responses (docket no. 65) is DENIED for the reasons stated in Plaintiff's opposition and for the following additional reasons. The information requested by Defendants in their interrogatories is protected by the attorney work product doctrine and is furthermore attainable by the list of individuals who have knowledge of the Complaint which have been provided to the Plaintiff. Moreover, the Defendants have failed to establish substantial need or undue hardship that would justify disclosure of this information. See Hickman v. Taylor, 329 U.S. 495 (1947), Hodgson v. Charles Martin Inspectors of Petroleum, Inc., 459 F. 2d 303 (5th Cir. 1972).

Date: August 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that on Aug 21, 2003, a copy of the foregoing document was served to the following persons by:

X United States mail, proper postage affixed:

Robert J. Dyer III
Kip B Shuman
Trig R. Smith
Jeffrey A. Berens
Dyer & Shuman LLP
801 East 17th Ave
Denver CO 80218-1417

Steven G. Shulman
Milberg Weiss Bershad Hynes & Lerach LLP
One Pennsylvania Plaza
49th Floor
New York NY 10119

Howard K. Coates Jr
Jonathan M. Stein
Cauley Geller Bowman & Coates
One Boca Place, Suite 421A
Boca Raton FL 33431

Marc Topaz
Schiffrin & Barroway LLP
Three Bala Plaza East Suite 400
Bala Cynwyd PA 19004

Fred T. Isquith
Gregory M. Nespole
Thomas H. Burt
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Ave 10th Floor
New York 10016

Charles J. Piven
Law Offices of Charles J. Piven PA
The World Trade Center, Baltimore
401 East Pratt Street Suite 2525
Baltimore MD 21202

Timothy K. Roake
John D. van Loben Sels
Gibson Dunn & Crutcher LLP
1530 Page Mill Road
Palo Alto CA 94304

Gregory Kerwin
Danielle Kitson
Gibson Dunn & Crutcher LLP
1801 California Street Suite 4100
Denver CO 80202

Lori G. Feldman
Tamara J. Driscoll
Milberg Weiss Bershad Hynes & Lerach LLP
1001 Fourth Avenue Suite 2550
Seattle WA 98154

Jeffrey S. Abraham
Abraham & Paskowitz
One Penn Plaza Suite 1910
New York NY 10119-0165

Robert F. Hill
Hill & Robbins PC
1441 18th Street Suite 100
Denver CO 80202

K.C. Groves
Ireland Stapleton Pryor & Pascoe PC
1675 Broadway Suite 2600
Denver CO 80202

Deputy Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JASON STANLEY, et al. ON BEHALF OF THEMSELVES and ALL OTHERS SIMILARLY SITUATED, Plaintiffs, v. SAFESKIN CORPORATION, et al., Defendants.	Civil No. 99cv0454-BTM (LSP) **ORDER DENYING DEFENDANTS' REQUEST FOR FURTHER IDENTIFICATION OF SOURCES IDENTIFIED IN THE PLEADINGS**

The issue before the Court arises from a discovery dispute. Defendants, Safeskin Corporation, et al., seek further identification of sources identified in the pleadings as "knowledgeable sources," pursuant to Defendants' propounded interrogatory. Plaintiffs, Jason Stanley, et al., on behalf of themselves and all others similarly situated, oppose on the basis that they have provided a response that is both adequate and responsive in nature. For the reasons outlined below, the Court DENIES Defendants' request for further identification of the sources identified in the pleadings.

PROCEDURAL BACKGROUND

On March 7, 2001, the Court was contacted regarding discovery issues that counsel for the parties wished to discuss with the Court. Pursuant to the request and discussions with counsel, an informal briefing schedule was set.

85

On March 28, 2001, this court held a telephonic Discovery Conference with counsel. Of the five issues discussed and briefed, all but one were resolved. The remaining matter is based on Plaintiffs' Consolidated Amended Complaint which contains a number of allegations made on "information and belief." These allegations identify as the basis for Plaintiffs' beliefs, information provided by "knowledgeable sources and/or various documents." In Defendants' earlier Motion to Dismiss the Consolidated Amended Complaint, it was argued that this form of pleading was inconsistent with the Private Securities Litigation Reform Act of 1995 (PSLRA) and Ninth Circuit case law, which expressly provides that allegations made on "information and belief" contain a list of the basis for the belief in great detail, including the sources of the information and a description of the particular documents. Defendants' Motion to Dismiss was granted in part and denied in part.

Thereafter, Defendants sought Certification for Interlocutory Appeal alleging that the Court erroneously applied the alleged facts in the complaint to the controlling law of the PSLRA as interpreted by the Court of Appeals in In re Silicon Graphics Securities Litigation, 183 F.3d 970 (9th Cir. 1999). On December 4, 2000, Judge Moskowitz issued an Order Denying Defendants' Motion for Certification for Interlocutory Appeal. In that order, the Court directed that "...all defendants receive priority discovery of the sources not identified in the amended complaint."

Defendants thereafter propounded an interrogatory to Plaintiffs requesting "the identification of all sources of information upon which the allegations of the Complaint are based including without limitation, 'knowledgeable sources' referred to in paragraphs 14, 15, 17, 18, 19, 20, 34, 36, 38, 39 and 40 of the Complaint."[1] Plaintiffs responded by providing a list of 32 individuals who they assert are knowledgeable about the issues alleged in the Complaint. The issue before this Court is whether Plaintiffs' response to the interrogatory is sufficient.

//

//

//

//

[1] The interrogatory was implicitly limited to individuals identities and did not call for identification of written materials.

DISCUSSION

Defendants maintain that Judge Moskowitz' December 4, 2000 Order, which directs that "...all defendants receive priority discovery of the sources not identified in the amended complaint," is entirely consistent with the unambiguous language of the PSLRA and the Ninth's Circuit's decision in In re Silicon Graphics, 183 F. 3d 970 (9th Cir. 1999). (Defendants' March 16, 2001 correspondence "corresp." at 9). Defendants argue that the PSLRA is clear "that a plaintiff who seeks to interject affirmative matter into a case through the use of 'information and belief' allegations must identify 'all sources' upon which those allegations are based." (March 16 corresp. at 9 citing 15 U.S.C. § 78u-4(b)(1)). Defendants further maintain that the Ninth Circuit has interpreted this requirement to mean that Plaintiffs must include a "list of sources in great detail." (March 16 corresp. at 9 citing In re Silicon Graphics, 183 F. 3d at 984).

Plaintiffs assert they have provided Defendants with the information to which Defendants are entitled to receive according to Judge Moskowitz' order. Plaintiffs further maintain that to the extent Defendants seek an order requiring Plaintiffs to identify witnesses in relation to specific allegations in the Complaint, Defendants seek work product.

In In re Silicon Graphic, the Ninth Circuit discussed the heightened pleading standard required by the PSLRA. In re Silicon Graphics, 183 F. 3d at 982. ("Under the PSLRA a plaintiff is required to state with particularity all facts giving rise to a 'strong inference' of the required state of mind. Accordingly, plaintiffs alleging securities fraud shall 'state with particularity all facts on which their belief is based.'" Id. citing 15 U.S.C. § 78u-4(b)(1)-(2)). There, the Court interprets "the statutory command that a plaintiff plead all 'facts' with 'particularity' to mean that a plaintiff must provide a list of all relevant circumstances in great detail." In re Silicon Graphics, 183 F. 3d at 982.

On September 15, 2000, Judge Moskowitz issued an Order Granting in Part and Denying in part Defendants' Motion to Dismiss. Stanley v. Safeskin, 2000 WL 33115908 *2 (S.D. Cal.) In that order, the Court assessed Plaintiffs' allegations in light of the heightened pleading standard as interpreted in In re Silicon Graphics. Stanley, 2000 WL 33115908 *2. In so doing, the Court agreed with Defendants' assertion that Plaintiffs' allegations of internal reports and insider trading could have been pled with additional detail. Id. However, the Court found that Plaintiffs' complaint, considered in its entirety, states facts which give

rise to a strong inference of deliberate recklessness, thereby meeting the requirements of the heightened pleading standard as set by the PSLRA and interpreted in In re Silicon Graphics. Id.

Because Defendants' Motion to Dismiss was denied, Plaintiffs have survived the pleading stage governed by the PSLRA and interpreted in In re Silicon Graphics. While Judge Moskowitz does explicitly order priority discovery of the sources not identified in the amended complaint, having ruled that Plaintiffs have met the heightened pleading standard, all remaining discovery issues are evaluated under the Federal Rules of Civil Procedure applicable to all civil matters pending before the Court. Therefore, the question is whether the answer adequately responds to the interrogatory. The Court finds Plaintiffs have met the appropriate standards and the answer is adequate. If Defendants seek a refined list of identities within those already provided, it is implausible that the response to the interrogatory is insufficient or inadequate. At worst, it is merely over-inclusive.

Based on the foregoing, the Court finds the response adequate and DENIES Defendants' request for further response to the interrogatory.

Dated: April 12, 2001

LEO S. PAPAS
United States Magistrate Judge

cc: The Honorable Barry T. Moskowitz
All Counsel of Record